

overlashed cables. Thus, host attachers should not be forced to permit others to overlash. Instead of giving overlashers effective control of the decision to overlash, the Commission should restore some control of overlashing to the pole owner.

One of MCI's changes is worthy of consideration. To prevent unjust enrichment of the host attacher, it should not be allowed to charge rates to overlashers that in the aggregate recover more than it pays the pole owner, except for any direct administrative costs. In other words, the host attacher should not be allowed to make a profit on the "sublease" of space to the overlashers, while the pole owner is limited to Section 224's maximum rate.

VII. CABLE OPERATORS THAT DO NOT SOLELY PROVIDE CABLE SERVICE SHOULD PAY THE SECTION 224(E) TELECOMMUNICATIONS ATTACHMENT RATE.

SBC agrees with Bell Atlantic and MCI that it is improper for the Commission to apply the Section 224(d) rate to attachments that do not "solely provide cable service."⁵¹ Specifically, in providing cable modem service, a cable operator is using its attachments to provide a connection between the subscriber and an Internet service provider. This connection is not distinguishable from the transmission service furnished by a local telephone company. If the cable operator does nothing more than provide a transparent transmission path to and from the Internet service provider, then even in the

⁵¹ Bell Atlantic Petition at 2-5; MCI Petition at 4-6; SBC Petition at 3-7.

Commission's view, what it is doing is clearly a telecommunications service, i.e., offering transmission of information without change in its form or content as sent and received.⁵² However, even if the cable operator goes beyond the mere provision of a transmission path, its provision of Internet access service or other Internet-related content or features would also go beyond the provision of cable service and require the application of Section 224(e)'s telecommunications attachment rate. As MCI observed, unlike Section 224(d), which is limited to "solely" cable service, Section 224(e) is not limited to "solely" telecommunications service.⁵³ Hence, if commingled provision of cable and other services is to fit in either category, it can only fit into the one that does not contain the limiting word "solely."⁵⁴

In any event, for the reasons set forth in SBC's Petition, the Section 224(e) telecommunications attachment rate should be applied to a cable operator's provision of Internet telephony or any other telecommunications-like non-cable service.⁵⁵

⁵² See Universal Service Order, 12 FCC Rcd 8776, 9180-81 ¶ 789 (1997); Universal Service Report to Congress, FCC 98-67, released April 10, 1998, ¶¶ 39, 41, 69 & n. 140, 73-74.

⁵³ MCI Petition at 6-7.

⁵⁴ SBC does not agree with MCI to the extent it appears to argue that attachments used to provide information services, but not telecommunications or cable service, would be subject to Section 224 rates. See MCI at 7-8. Pure information service providers are not subject to Section 224 at all.

⁵⁵ SBC Petitions at 3-7.

VIII. CONCLUSION.

For the foregoing reasons, SBC requests that the Commission reconsider the Report and Order as sought in SBC's Petition and the other petitions supported by SBC in these Comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "COMMENTS OF SBC COMMUNICATIONS, INC." in CS Docket No. 97-151 has been filed this 12th day of May, 1998 to the Parties of Record.

A handwritten signature in cursive script, reading "Katie M. Turner", written over a horizontal line.

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